

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELEKTRA ENTERTAINMENT GROUP,)
INC., et al.,)

Plaintiffs,)

v.)

JUNISE KEYS,)

Defendant.)

No. C06-2047 SBA (BZ)

**REPORT AND RECOMMENDATION ON
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

By Order dated November 1, 2006, the Honorable Sandra Brown Armstrong referred to me plaintiffs' motion for entry of default judgment against defendant. The following is my report and recommendation for entry of default judgment.

On March 17, 2006, plaintiffs filed a complaint under the Copyright Act of 1976, 17 U.S.C. §§ 101, et seq. The complaint alleges that defendant violated the Copyright Act at least twenty-one separate times by downloading and/or distributing twenty-one recordings without the permission or consent of the plaintiffs. Compl. ¶¶ 18, 16. Plaintiffs allege that proper notices of copyright for all twenty-one recordings have been widely published, and that defendant's

1 actions violate plaintiffs' exclusive rights of reproduction
2 and distribution. Id. at ¶¶ 19, 18. Plaintiffs plead
3 defendant's actions as willful and intentional, id. at ¶ 20,
4 and seek statutory damages under 17 U.S.C. section 504©),
5 injunctive relief pursuant to sections 502 and 503, and
6 reasonable costs pursuant to section 505. See id. at ¶¶ 21,
7 22. Specifically, plaintiffs seek the minimum amount of
8 statutory damages for each of the twenty-one violations
9 totaling \$15,750.00, costs of litigation totaling \$320.00, and
10 an injunction prohibiting defendant from present and future
11 infringement. See id. at ¶ 22; Motion for Entry of Default
12 Judgment, at 2.

13 On May 29, 2006, plaintiffs had the complaint and related
14 papers personally served on defendant. Defendant failed to
15 answer the complaint or otherwise defend the action. On July
16 13, 2006, upon plaintiff's request, the Clerk of this court
17 entered defendant's default under Rule 55(a). By its default,
18 defendant is deemed to have admitted the well-pleaded
19 averments of the complaint except those as to the amount of
20 damages. See Fed. R. Civ. P. 8(d). Plaintiffs' pleadings are
21 sufficient to demonstrate defendant's violations of the
22 Copyright Act. See 17 U.S.C. §§ 106, 102(a)(7), 501(a) & (b);
23 see also Sony Music Entm't, Inc. v. Elias, 2004 WL 141959, at
24 *1, *3 (C.D. Cal. Jan. 20, 2004)

25 A court may not enter a default judgment against an
26 unrepresented minor, an incompetent person, or a person in
27 military service. See Fed. R. Civ. P. 55(b)(2); 50 App.
28 U.S.C. § 521. Plaintiffs' counsel has declared under penalty

1 of perjury that searches of various databases, including one
2 maintained by the Department of Defense, have disclosed that
3 defendant is not an infant, incompetent person, or a person in
4 military service. Decl. Of Thomas Kerr in Further Supp. of
5 Mot. for Def. J. ("Kerr Decl.") ¶¶ 15, 16.

6 Pursuant to Rule 55(b)(2), the court may enter a default
7 judgment against a party against whom default has been
8 entered. The decision to grant or deny a default judgment
9 under Rule 55(b) is within the discretion of the court. Eitel
10 v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Although a
11 formal hearing is not required for a court to render a default
12 judgment, Davis v. Fendler, 650 F.2d 1154 (9th Cir. 1981), the
13 plaintiff has the burden of proving damages through testimony
14 or written affidavit. If damages are ascertainable, however,
15 there is no need for an evidentiary hearing. See Elias, 2004
16 WL 141959, at *4 (citing Ortiz-Gonzalez v. Fonovisa, 277 F.3d
17 59, 63-64 (1st Cir. 2002)).

18 Section 504(a) of the Copyright Act provides that a
19 copyright infringer may be liable for statutory damages under
20 section 504(c). Section 504(c) allows a victim under the
21 statute to elect to recover statutory damages for each
22 violation "in a sum of not less than \$750 or no more than
23 \$30,000 as the court considers just."

24 By virtue of her default, defendant has admitted to
25 twenty-one violations of the Copyright Act. Because
26 plaintiffs seek only the minimum statutory damages available
27 under the statute, the request is ascertainable and
28 reasonable. See id. I recommend that the court award

1 plaintiffs \$750.00 for each of the twenty-one violations,
2 totaling \$15,750.00.


3 In addition, section 505 of the Copyright Act allows the
4 court, in its discretion, to award reasonable attorneys' fees
5 and costs. Plaintiffs' counsel has declared under penalty of
6 perjury that, in pursuing this claim, plaintiffs incurred a
7 \$250.00 filing fee and a \$70.00 service of process fee, for a
8 total of \$320.00. See Kerr Decl. ¶ 17. The request,
9 supported by counsel's declaration, is reasonable. See Elias,
10 2004 WL 141959, at *5 (citing Discovery Comm., Inc. v. Animal
11 Plant, Inc., 172 F. Supp. 2d 1282, 1292 (C.D. Cal. 2001)). I
12 recommend the court award plaintiffs \$320 in litigation costs.

13 Finally, section 502 of the Copyright Act grants to the
14 court the authority to issue injunctive relief to "prevent or
15 restrain infringement of a copyright." 17 U.S.C. § 502(a).
16 "'Generally, a showing of copyright infringement liability and
17 the threat of future violations is sufficient to warrant a
18 permanent injunction.'" Jackson v. Sturkie, 255 F. Supp. 2d
19 1096, 1103 (N.D. Cal. 2003) (quoting Sega Enterprises, Ltd. v.
20 MAPHIA, 948 F.Supp. 923, 940 (N.D. Cal. 1996)). As explained,
21 defendant's admissions demonstrate twenty-one separate
22 violations of the Copyright Act. Moreover, there can be no
23 assurance that defendant will not continue to infringe
24 plaintiffs' materials, be they now in existence or later
25 created. See Elias, 2004 WL 141959, at *4-*5 (granting
26 injunctive relief with respect to plaintiffs' existing
27 materials and those created in the future). I therefore
28 recommend that the court grant plaintiffs' request for

1 injunctive relief.

2 The evidence before me is sufficient to negate the need
3 for an evidentiary hearing. For the foregoing reasons, I
4 recommend that judgment be entered in plaintiffs' favor
5 against defendant for a total award of \$16,070.00. This
6 amount includes \$15,750.00 in statutory damages and \$320.00 in
7 litigation costs. In addition, I recommend that the court
8 grant plaintiffs the injunctive relief sought in their
9 complaint.

10 Dated: November 7, 2006

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12 _____
13 Bernard Zimmerman
14 United States Magistrate Judge

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